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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 MATTHEW GANTT,

7 Plaintiff,

8 v.

9 JANET RHOTON,

10 Defendants.

Case No. C19-5352 RBL-TLF

ORDER TO SHOW CAUSE AND
ESTABLISHING BRIEFING
SCHEDULE

11 On Thursday, September 26, 2019, plaintiff filed a motion for an “Order to Show Cause
12 for a Preliminary Injunction and Temporary Restraining Order.” Dkt. 28. Plaintiff claims that he
13 was denied medical attention for “seeing splotches and spitting blood” on September 15, 2019,
14 and that he fears for his life if he should wait to bring his request for medical attention through
15 the grievance system. *Id.* at 2. Plaintiff alleges that his current situation is life-threatening and
16 requires immediate intervention by the court. Despite the allegations of a serious safety concern,
17 the court may not order a preliminary injunction or temporary restraining order (“TRO”) unless
18 plaintiff shows that the conditions necessitating the court’s intervention stem from the claim in
19 his complaint.

20 To obtain a preliminary injunction or TRO, the moving party must demonstrate: (1) he is
21 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of
22 preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the
23 public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see also
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1 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (the
2 same substantive standard applies to TROs and preliminary injunctions). To fulfill the
3 “irreparable harm” requirement, the movant “must demonstrate immediate threatened injury”
4 and “do more than merely allege imminent harm.” *Associated Gen. Contractors of California,*
5 *Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991).

6 Plaintiff’s motion is deficient, because the conduct of which he complains not clearly a
7 part of the claim in his civil action. Plaintiff cannot establish a likelihood of success on the merits
8 of a claim that has not been raised in a complaint. Plaintiff’s current complaint names only Janet
9 Rhoton, a supervisor at Pierce County Jail, as defendant, and his motion for a TRO describes the
10 conduct of unnamed guards and a nurse. Plaintiff has moved for leave to amend his complaint to
11 include other defendants (Dkt. 21), but at this point the connection is tenuous between plaintiff’s
12 complaint and his current quality of medical treatment.

13 Secondly, plaintiff has not attested, nor has the defense attested, whether plaintiff is a
14 pre-trial or post-conviction detainee, which determines the rights that form the basis of plaintiff’s
15 medical claim. If plaintiff is incarcerated after his conviction at trial, then the Eighth Amendment
16 prohibits “deliberate indifference” to plaintiff’s serious medical needs, according to the
17 *subjective* intent of the defendant. *Colwell v. Bannister*, 763 F.3d 1060, (9th Cir. 2014); *see*
18 *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1242-43 (9th Cir. 2010). If plaintiff has not
19 yet stood trial, then the Due Process Clause of the Fourteenth Amendment governs his rights and
20 prohibits *objectively* deliberate indifference to plaintiff’s medical needs: “something akin to
21 reckless disregard” of the risks to plaintiff. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th
22 Cir. 2018). To determine the applicable legal standard by which the Court makes an assessment
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1 of whether injunctive relief is warranted, plaintiff and/or defendant must provide this elementary
2 fact.

3 Furthermore, a party may obtain a TRO without notice to the adverse party, but only after
4 providing “specific facts in an affidavit or a verified complaint clearly show[ing] that immediate
5 and irreparable injury, loss, or damage will result to the movant before the adverse party can be
6 heard in opposition,” and providing a certified explanation of why notice should not be required.
7 Fed. R. Civ. P. 65(b)(1). Plaintiff’s motion is unclear as to the specific relief sought from the
8 Court and does not provide specific facts to give the defense notice of the basis upon which he
9 seeks a temporary restraining order or preliminary injunction.

10 Plaintiff is directed to submit an affidavit on or before Friday, October 11, 2019, as to:

- 11 (1) whether plaintiff is a pretrial detainee or a post-trial inmate;
12 (2) how the motion for a temporary restraining order is related to plaintiff’s claim; and
13 (3) what specific actions or relief plaintiff wishes the Court to order.

14 The Clerk of Court is directed to re-note plaintiff’s “Motion for Order to Show Cause for
15 Temporary Restraining Order and Preliminary Injunction” (Dkt. 28) on the Court’s calendar for
16 Friday, October 25, 2019.

17 Defendant shall file a response, including a response as to whether plaintiff is a pre-trial
18 detainee or post-conviction prisoner no later than Friday, October 18, 2019.

19 Plaintiff’s reply, if any, shall be filed no later than the note date.
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21 Dated this 1st day of October, 2019.
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Theresa L. Fricke

Theresa L. Fricke
United States Magistrate Judge